IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Bail Appl..No. 6824 of 2007()

CRIME NO. 822/06 OF VAIKOM POLICE STATION
CP.28/2007 of J.M.F.C.,VAIKOM

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PETITIONERS/ACCUSED

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1. P.S.RADHAKRISHNAN,
   S/O.PARAMESWARAN NAIR, NELLIPPILLY HOUSE,
   THEKKENADA.P.O., VAIKOM.

2. RADHAKRISHNAN, S/O.VASUDEVAN NAIR,
   KALAPPURAKKAL HOUSE, KANDANTHURUTH,
   THALAYAZHAM.

3. REMESAN, S/O.RAVUNNY,
   NERVAZHIYIL VEEDU, KODOOPADAM,
   KULASEKHARAMANGALAM.

BY ADV. SRI.K.RAVIKUMAR

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P. RAVINDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6824 of 2007

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Dated this the 13th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners face indictment in a prosecution for offences punishable, inter alia, under ection 412 I.P.C. The first petitioner's brother-in-law, an Advocate, is the defacto complainant. The complaint was filed before the learned Magistrate and the same was referred to the police under Section 156(3) Cr.P.C. The first petitioner is the brother-in-law of the defacto complainant - they having married sisters. The first petitioner is a document writer. The brothers-in-law were sharing a common office. Documents, which the clients handed over to the defacto complainant were allegedly entrusted to the first accused and kept in the possession of the first accused. Such documents were allegedly taken away by the first accused and were allegedly misused.

2. Investigation is now complete. Final report has already been filed. Committal proceedings has been registered. The

petitioners have not been arrested yet. The petitioners apprehend arrest in execution of the process issued by the learned Magistrate after taking cognizance.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The petitioners were never sought to be arrested at the crime stage. They received summons from the court. They have entered appearance through counsel. But they apprehend that when they appear and apply for bail their applications may not be considered by the learned Magistrate. They pray that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C.

4. It is certainly for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the applications for bail to be filed by the petitioners when they surrender before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must

do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself. Needless to say, the petitioners' applications for bail must be considered by the learned Magistrate in the light of the decision in **Sukumari** v. **State of Kerala** (2001 (1) KLT 22).

(R. BASANT)
Judge

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